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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 MARIA RAMOS, ) Civil No. 08-2129-WQH(WVG)  
12 )  
13 Plaintiff, ) REPORT AND RECOMMENDATION  
14 ) GRANTING PLAINTIFF'S MOTION  
15 v. ) FOR SUMMARY JUDGMENT AND  
16 ) DENYING DEFENDANT'S MOTION  
17 MICHAEL J. ASTRUE, Commissioner ) FOR SUMMARY JUDGMENT  
18 of Social Security, )  
19 Defendant. ) (Doc. Nos. 12, 15)  
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18 Plaintiff Maria Ramos (hereafter "Plaintiff"), filed a  
19 Complaint For Judicial Review And Remedy On Administrative Decision  
20 Under The Social Security Act [42 U.S.C. §405(g)]. Defendant  
21 Michael J. Astrue (hereafter "Defendant"), filed an Answer to the  
22 Complaint and the administrative record (hereafter "Tr."), pertain-  
23 ing to this case. Plaintiff has filed a Motion for Summary Judgment.  
24 Defendant has filed an Opposition to Plaintiff's Motion for Summary  
25 Judgment and a Cross-Motion for Summary Judgment.

26 The Court, having reviewed Plaintiff's Motion for Summary  
27 Judgment, Defendant's Opposition to Plaintiff's Motion for Summary  
28 Judgment, Defendant's Cross-Motion for Summary Judgment and the

1 administrative record filed by Defendant, hereby finds that  
2 Plaintiff is entitled to the relief requested and therefore  
3 RECOMMENDS that Plaintiff's Motion for Summary Judgment be GRANTED  
4 and Defendant's Motion for Summary Judgment be DENIED.

5 I

6 PROCEDURAL HISTORY

7 On January 22 and August 24, 2004, Plaintiff filed applica-  
8 tions for disability insurance benefits and supplemental security  
9 income, alleging that she was disabled since July 7, 2003. (Tr. 274-  
10 279). The Commissioner of Social Security denied her applications  
11 and the Appeals Council remanded the case for a further hearing.  
12 (Tr. 163-164, 235-242, 259-262). On February 21 and 26, 2007,  
13 hearings were held at which Plaintiff appeared with counsel and  
14 testified before an Administrative Law Judge (hereafter "ALJ") (Tr.  
15 117-162). On May 27, 2007, the ALJ found that Plaintiff was not  
16 disabled given her residual functional capacity for a reduced range  
17 of light work. (Tr. 16-31). The ALJ's decision became the final  
18 decision of the Commissioner of Social Security when the Appeals  
19 Council denied Plaintiff's request for review. (Tr. 4-8).

20 II

21 SUMMARY OF APPLICABLE LAW

22 Title II of the Social Security Act (hereinafter "Act"), as  
23 amended, provides for the payment of insurance benefits to persons  
24 who have contributed to the program and who suffer from a physical  
25 or mental disability. 42 U.S.C. § 423 (a)(1)(D). Title XVI of the  
26 Act provides for the payment of disability benefits to indigent  
27 persons under the Supplemental Security Income (SSI) program. § 1382  
28 (a). Both titles of the Act define "disability" as the "inability

1 to engage in any substantial gainful activity by reason of any  
2 medically determinable physical or mental impairment which can be  
3 expected to last for a continuous period of not less than 12  
4 months..." Id. The Act further provides that an individual:

5 shall be determined to be under a disability only if  
6 his physical or mental impairment or impairments are  
7 of such severity that he is not only unable to do his  
8 previous work but cannot, considering his age,  
9 education, and work experience, engage in any other  
10 kind of substantial gainful work which exists in the  
11 national economy, regardless of whether such work  
12 exists in the immediate area in which he lives, or  
13 whether a specific job vacancy exists for him, or  
14 whether he would be hired if he applied for work. Id.

11 The Secretary of the Social Security Administration has  
12 established a five-step sequential evaluation process for determin-  
13 ing whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920.  
14 Step one determines whether the claimant is engaged in "substantial  
15 gainful activity." If he is, disability benefits are denied. 20  
16 C.F. R. §§ 404.1520(b), 416.920(b). If he is not, the decision  
17 maker proceeds to step two, which determines whether the claimant  
18 has a medically severe impairment or combination of impairments.  
19 That determination is governed by the "severity regulation" at issue  
20 in this case. The severity regulation provides in relevant part:

21 If you do not have any impairment or combination of  
22 impairments which significantly limits your physical  
23 or mental ability to do basic work activities, we will  
24 find that you do not have a severe impairment and are,  
therefore, not disabled. We will not consider your  
age, education, and work experience. §§ 404.1520(c),  
416.920(c).

25 The ability to do basic work activities is defined as "the  
26 abilities and aptitudes necessary to do most jobs." 20 C.F.R. §§  
27 404.1521(b), 416.921(b). Such abilities and aptitudes include  
28 "[p]hysical functions such as walking, standing, sitting, lifting,

1 pushing, pulling, reaching, carrying, or handling;" "[c]apacities  
2 for seeing, hearing, and speaking;" "[u]nderstanding, carrying out,  
3 and remembering simple instructions;" [u]se of judgment;"  
4 "[r]esponding appropriately to supervision, co-workers, and usual  
5 work situations;" and "[d]ealing with changes in a routine work  
6 setting." Id.

7 If the claimant does not have a severe impairment or  
8 combination of impairments, the disability claim is denied.

9 If the impairment is severe, the evaluation proceeds to the  
10 third step, which determines whether the impairment is equivalent to  
11 one of a number of listed impairments that the Secretary acknowl-  
12 edges are so severe as to preclude substantial gainful activity. 20  
13 C.F.R. §§ 404.1520(d), 416.920(d). If the impairment meets or  
14 equals one of the listed impairments, the claimant is conclusively  
15 presumed to be disabled. If the impairment is not one that is  
16 conclusively presumed to be disabling, the evaluation proceeds to  
17 the fourth step, which determines whether the impairment prevents  
18 the claimant from performing work he has performed in the past. If  
19 the claimant is able to perform his previous work, he is not  
20 disabled. 20 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant  
21 cannot perform his previous work, the fifth and final step of the  
22 process determines whether he is able to perform other work in the  
23 national economy in view of his age, education, and work experience.  
24 The claimant is entitled to disability benefits only if he is not  
25 able to perform other work. 20 C.F.R. §§ 404.1520(f), 416.920(f).

## III

ALJ'S FINDINGS

The ALJ made the following pertinent findings:

1. (Plaintiff) meets the insured status requirements of the Social Security Act through December 30, 2009.

2. (Plaintiff) engaged in substantial gainful activity in 2003 and for the first seven months of 2004. She has not engaged in substantial gainful activity since August 1, 2004.

(Plaintiff's) 2003 earnings record reflects earnings from an electronics firm and self-employment income, and (Plaintiff) has acknowledged she worked for an electronics firm and as a self-employed baby sitter.

According to (Plaintiff), she began babysitting in 2003 and babysat two boys, ages ten and seven. Although she could not remember the exact date she began babysitting, she recalled that she begun babysitting when she stopped working at the electronics company. She continued babysitting until sometime in July 2004, when the mother of the two boys sent the children to live with their grandmother in Alabama.

3. (Plaintiff) has had the following severe combination of impairments: a history of right shoulder impingement syndrome, status-post subacromial decompression surgery, and depressive disorder.

These impairments, considered in combination, had more than a minimal effect on (Plaintiff's) ability to perform basic work-related activities.

From a mental standpoint, (Plaintiff) had no more than mild restriction in activities of daily living, mild difficulties in maintaining social functioning, mild difficulties in maintaining the concentration, persistence, or pace needed for simple repetitive tasks to detailed but non-complex tasks, and moderate-to-marked difficulties in maintaining the concentration, persistence, or pace needed for the performance of complex tasks. (Plaintiff) has one-to-two episodes of decompensation.

4. (Plaintiff) has not had an impairment or combination of impairments that meets or medically equals one the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1.

No physician has opined that (Plaintiff's) condition meets or equals any listing, and the State Agency physicians opined that it does not.

1           5. After careful consideration of the entire record,  
2           the undersigned finds that (Plaintiff) has had the  
3           residual functional capacity to do the following: lift  
4           up to ten pounds frequently; lift up to twenty pounds  
5           occasionally; sit for six hours in an eight-hour day;  
6           stand and/or walk for six hours in an eight-hour day;  
7           and perform simple repetitive work and detailed work  
8           without public contact. She should not engage in  
9           overhead reaching, pushing, or pulling with the right  
10          arm. Nor should she squat, crawl, or operate foot  
11          controls.

12          (Plaintiff) alleges disability commencing July 3,  
13          2003, due to physical and mental limitations. Her  
14          former attorney argues that (Plaintiff's) medications  
15          slowed her thought processes and impaired her ability  
16          to concentrate. (Plaintiff's) former attorney further  
17          contended that (Plaintiff) was limited by chronic  
18          shoulder, neck, hip, and back pain as well as mental  
19          fatigue. According to her present attorney, (Plaintiff)  
20          has been limited to no more than sedentary work  
21          (i.e. lifting and carrying limited to ten pounds  
22          occasionally and less than ten pounds frequently,  
23          standing or walking for less than four hours in an  
24          eight-hour day in thirty-minute increments, and  
25          sitting for less than six hours in an eight-hour day  
26          in fifteen-minute increments.) (Plaintiff's) present  
27          attorney further argues that (Plaintiff) had addi-  
28          tional non-exertional limitations due to depression.

          After considering the evidence of record, the under-  
signed finds that (Plaintiff's) medically determinable  
impairments could reasonably be expected to produce  
the alleged symptoms, but that (Plaintiff's) state-  
ments concerning the intensity, persistence and  
limiting effects of these symptoms are not entirely  
credible.

          The undersigned, having considered all of the func-  
tional capacity assessments, finds that the above-  
adopted residual functional capacity most accurately  
represents (Plaintiff's) degree of limitation. The  
assessments of (doctors who opined as to Plaintiff's  
functional capacity) all allow for the performance of  
light work activity.

          Turning to (Plaintiff's) mental capacity, (Plaintiff's)  
medical records show that (she) was treated  
for depression due to symptoms of depressed mood,  
depressed affect, tearfulness, diminished energy, and  
motivation, and feelings of hopelessness. However, her  
thought processes remained logical and she had no  
suicidal ideation. Prescription medications have  
varied and have included medications such as Prozac,  
Wellbutrin, Trazadone, Lorazepam, and Zoloft.

1 (After) considering the (psychological assessments of  
2 Plaintiff), the undersigned finds the above-adopted  
3 residual functional capacity most accurately repre-  
sents (Plaintiff's) limitations during the time period  
in issue.

4 While the undersigned is sympathetic with the diffi-  
5 culties that (Plaintiff) has been experiencing, they  
do not support a conclusion of "disability" under the  
6 Act. The undersigned has considered (Plaintiff's)  
allegations of pain, excess pain, and limitations  
7 pursuant to the law of the Ninth Circuit Court of  
Appeals, Social Security Ruling 96-7p, and the  
8 pertinent regulations. However, (Plaintiff's)  
allegations of disability are not credible to the  
9 extent alleged.

10 6. (Plaintiff) has been capable of performing her past  
relevant work as a certified nurse's assistant/escort,  
11 as actually performed, a children's monitor as  
actually performed, and an upholsterer sewer job as  
generally performed. These jobs do not require the  
12 performance of work-related activities precluded by  
(Plaintiff's) residual functional capacity.

13 The vocational expert identified (Plaintiff's) past  
14 relevant work as follows: a certified nurses assis-  
tant/escort (DOT# 355.674-014), a semi-skilled  
15 occupation customarily performed at a medium  
exertional level but actually performed at a light  
16 exertional level; a stock clerk/parts and order clerk  
(DOT# 249.367-058), a semi-skilled occupation custom-  
17 arily performed at a light level of exertion; a  
housekeeper (DOT# 321.137-010), an unskilled occupa-  
18 tion customarily performed at a light level of  
exertion; a housekeeping supervisor (DOT# 323.137-  
19 010), an occupation performed at a medium exertional  
level customarily skilled in nature but not actually  
20 performed as semi-skilled in nature; a  
babysitter/children's monitor (DOT# 301.677-010),  
21 semi-skilled occupation customarily performed at a  
medium exertional level and actually performed at a  
22 light exertional level; and an upholstery  
sewer/seamstress (Dot# 780.682-018) a semi-skilled  
23 occupation customarily performed at a light exertional  
level.

24 When the vocational expert was posed with a hypotheti-  
25 cal question considering (Plaintiff's) physical  
residual functional capacity as adopted above, she  
26 opined that (Plaintiff) could perform (her) past  
relevant work as a certified nurse's assistant/escort,  
27 as actually performed, a children's monitor as  
actually performed, and an upholsterer sewer job.  
28 When asked to consider a hypothetical individual with  
a physical residual functional capacity for light work

1 and a mental limitation restricting her to simple-  
 2 repetitive-tasks and detailed tasks with no public  
 3 contact, the vocational expert concluded the hypothet-  
 4 ical individual would be able to perform the same past  
 relevant work. She further testified that her  
 opinions were consistent with the Dictionary of  
 Occupational Titles.

5 7. (Plaintiff) has not been under a disability, as  
 6 defined in the Social Security Act, from July 7, 2003  
 through the date of this decision.  
 (Tr. 22-31) (citations omitted).

#### 8 IV

#### 9 THE ALJ ERRED IN FINDING THAT PLAINTIFF COULD PERFORM HER PAST 10 RELEVANT WORK BY RELYING ON VOCATIONAL EXPERT TESTIMONY WITHOUT 11 ESTABLISHING THAT THE TESTIMONY WAS CONSISTENT WITH THE DICTIONARY 12 OF OCCUPATIONAL TITLES

13 Plaintiff argues that the ALJ erred in finding that Plaintiff  
 14 could perform her past relevant work. Specifically, Plaintiff  
 15 contends that the ALJ relied on expert vocational testimony  
 16 regarding what jobs Plaintiff could perform, but did not establish  
 17 that the evidence was consistent with the Dictionary of Occupational  
 Titles (hereafter "DOT"). Defendant asserts that there was substan-  
 tial evidence to support the ALJ's findings.

#### 18 1. Past Relevant Work

19 The ALJ found that Plaintiff was capable of performing her  
 20 past relevant work as a Nurse's Assistant, as actually performed, a  
 21 Children's Monitor, as actually performed, and an Upholsterer Sewer  
 22 job, as generally performed. However, the evidence in the record  
 23 regarding these jobs is scant. Plaintiff reported that her previous  
 24 job as a Nurse's Assistant consisted of helping patients make their  
 25 beds, escorting patients to a room where they could eat their meals  
 26 and escorting them back to their rooms, logging what patients ate,  
 27 and helping pick up trash. (Tr. 44-45, 143-144, 310, 316).  
 28 Plaintiff reported that her previous job as a Children's Monitor



1 consisted of watching two children, ages 7 and 10, feeding them pre-  
2 prepared food, and picking them up from school in her car and taking  
3 them to their home or her home. (Tr. 137, 141-143). Plaintiff merely  
4 reported that she previously held a job as a seamstress. However,  
5 no details about this job were presented. (Tr. 147). Here, the Court  
6 concludes that since the evidence of how Plaintiff actually  
7 performed the jobs of Nurse's Assistant and Child Monitor was  
8 sketchy at best, it can not conclude that Plaintiff was capable of  
9 performing these jobs as actually performed. Further, since no  
10 evidence was presented regarding the Upholsterer Sewer job, the  
11 Court cannot conclude that Plaintiff was capable of performing that  
12 job either.

## 13 2. Vocational Expert Testimony

14 The ALJ and Plaintiff's attorney asked the vocational expert  
15 several hypothetical questions regarding what jobs a person with  
16 Plaintiff's limitations could perform. (Tr. 151-161).

17 If a claimant cannot return to her former job, the ALJ must  
18 identify specific jobs existing in substantial numbers in the  
19 national economy that the claimant can perform, despite her  
20 identified limitations. A vocational expert witness may be required  
21 to identify jobs that match the abilities of the claimant, given her  
22 limitations. Johnson v. Shalala, 60 F.3d 1428, 1432 (9<sup>th</sup> Cir. 1995)

23 Social Security Ruling 00-4p (hereafter "SSR 00-4p") states  
24 in pertinent part that "(w)hen a (vocational expert)... provides  
25 evidence about the requirements of a job or occupation, the  
26 adjudicator has an *affirmative responsibility* to ask about any  
27 possible conflict between that (vocational expert)... evidence and  
28 information provided in the (DOT)."(emphasis added)

1 SSR 00-4p further provides that the adjudicator "will ask"  
 2 the vocational expert "if the evidence he or she has provided is  
 3 consistent with the (DOT) and obtain a reasonable explanation for  
 4 any apparent conflict." SSR 00-4p at \*4 (emphasis added); Massachi  
 5 v. Astrue, 486 F.3d 1149 (9<sup>th</sup> Cir. 2007).

6 An ALJ may rely on expert testimony which contradicts the  
 7 DOT, but only insofar as the record contains persuasive evidence to  
 8 support the deviation. Johnson, 60 F.3d at 1435.

9 The procedural requirements of SSR 00-4p ensure that  
 10 the record is clear as to why an ALJ relied on a  
 11 vocational expert's testimony, particularly in cases  
 12 where the expert's testimony conflicts with the  
 13 (DOT)... (T)he Social Security Administration relies  
 14 primarily on the (DOT) for 'information about the  
 15 requirements of work in the national economy.' The  
 16 Social Security Administration also uses testimony  
 17 from vocational experts to obtain occupational  
 18 evidence. Although evidence provided by a vocational  
 19 expert 'generally should be consistent' with the  
 20 (DOT), neither the (DOT) nor the (vocational ex-  
 21 pert)... evidence automatically 'trumps when there is  
 22 a conflict.' *Thus, the ALJ must first determine*  
 23 *whether a conflict exists. If it does, the ALJ must*  
 24 *then determine whether the vocational expert's*  
 25 *explanation for the conflict is reasonable and whether*  
 26 *a basis exists for relying on the expert rather than*  
 27 *the (DOT).*  
 28 Massachi, 406 F.3d at 1153 (citations omitted)(emphasis added).

20 The ALJ found that Plaintiff had the residual functional  
 21 capacity to do the following: lift up to ten pounds frequently; lift  
 22 up to twenty pounds occasionally; sit for six hours in an eight-hour  
 23 day; stand and/or walk for six hours in an eight-hour day; and  
 24 perform simple repetitive work and detailed work without public  
 25 contact. She should not engage in overhead reaching, pushing, or  
 26 pulling with the right arm. Nor should she squat, crawl, or operate  
 27 foot controls. Further, the ALJ found that Plaintiff had mild  
 28 restriction in activities of daily living, mild difficulties in

1 maintaining social functioning, mild difficulties in maintaining the  
2 concentration, persistence, or pace needed for simple repetitive  
3 tasks to detailed but non-complex tasks, and moderate-to-marked  
4 difficulties in maintaining the concentration, persistence, or pace  
5 needed for the performance of complex tasks. The ALJ concluded that  
6 Plaintiff was capable of performing her past relevant work as a  
7 certified Nurse's Assistant, a Children's Monitor, and an Uphol-  
8 sterer Sewer. (Tr. 30). The ALJ stated that these jobs do not  
9 require the performance of work-related activities precluded by  
10 Plaintiff's residual functional capacity.

11           Nevertheless, the ALJ and Plaintiff's attorney questioned the  
12 vocational expert about what jobs a person with Plaintiff's  
13 limitations could perform. (Tr. 151-161).<sup>1/</sup> Specifically, the ALJ  
14 asked whether a hypothetical individual could do her past relevant  
15 work if she had the limitations of ability to carry 20 pounds  
16 occasionally and ten pounds frequently, stand and walk six out of  
17 eight hours a day, no reaching overhead with the right extremity and  
18 occasional climbing. The Court notes that this hypothetical question  
19 reasonably included all of Plaintiff's *physical* limitations. The  
20 vocational expert responded to the hypothetical question that the  
21 hypothetical individual could perform the past relevant work of a  
22 nurse's assistant, and a children's monitor. (Tr. 151-152).

23           Thereafter, the ALJ asked the vocational expert whether the  
24 hypothetical individual noted above could do her past relevant work  
25 but also had a mild limitation in her ability to complete detailed  
26 tasks, moderate to complex tasks, and a mild limitation in interact-

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28       <sup>1/</sup>       Some of the hypothetical questions asked by the ALJ and Plaintiff's  
          attorney and the answers thereto are not entirely clear.

ing with peers. The Court notes that this hypothetical question reasonably included all of Plaintiff's *psychological* limitations. The vocational expert responded to the hypothetical question that the hypothetical individual could not perform her past relevant work. (Tr. 153).<sup>2/</sup>

Nonetheless, the ALJ concluded that Plaintiff could perform her past relevant work as a Nurse's Assistant, a Children's Monitor and an Upholsterer Sewer. Further, the vocational expert testified that her testimony regarding the jobs Plaintiff could perform were consistent with the DOT (Tr. 161). However, the Court's review of the DOT for these jobs shows that Plaintiff can not perform them.

#### 1. Nurse's Assistant

The ALJ did not ask the vocational expert about any possible conflict between her testimony and the evidence provided by the DOT. Had the ALJ asked about a conflict, or reviewed the DOT's description of a Nurse's Assistant, she would have found that a Nurse's Assistant must exert 20 to 50 pounds of force occasionally and 10 to 25 pounds of force frequently. Additionally, the physical demand requirement for this job is in excess of light work. Further, the job requires that a Nurse's Assistant must perform effectively under stress and must reach frequently. (DOT 355.674-014). Therefore, Plaintiff would not be able to perform this job. As a result, there

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<sup>2/</sup> The record reflects that the ALJ also asked the vocational expert if, given a hypothetical individual with all of Plaintiff's physical and psychological limitations, were there *other jobs* she could perform? The vocational expert responded by stating that the hypothetical individual could perform the work of a production inspector (DOT 669.687-014) and an assembler (DOT 715.687) (Tr. 153-154).

The Court notes that the ALJ asked the vocational expert several more hypothetical questions that did not completely address all of Plaintiff's physical and mental limitations. (Tr. 154-157). The Court also notes that Plaintiff's attorney asked the vocational expert a hypothetical question. However, the vocational expert's response to that question was unclear. (Tr. 157-161).

1 is a conflict between the vocational expert's testimony and the  
 2 evidence provided by the DOT. The ALJ failed to discharge her  
 3 duties pursuant to SSR 00-4p.

#### 4 2. Child Monitor

5 The ALJ did not ask the vocational expert about any possible  
 6 conflict between her testimony and the evidence provided by the DOT.  
 7 Had the ALJ asked about a conflict, or reviewed the DOT's descrip-  
 8 tion of a Child Monitor, she would have found that a Child Monitor  
 9 must exert 20 to 50 pounds of force occasionally and 10 to 25 pounds  
 10 of force frequently. Further, the job requires that a Child Monitor  
 11 must reach frequently. (DOT 301.677-010). Therefore, Plaintiff  
 12 would not be able to perform this job. As a result, there is a  
 13 conflict between the vocational expert's testimony and the evidence  
 14 provided by the DOT. The ALJ failed to discharge her duties  
 15 pursuant to SSR 00-4p.

#### 16 3. Upholstery Sewer

17 The ALJ did not ask the vocational expert about any possible  
 18 conflict between her testimony and the evidence provided by the DOT.  
 19 Had the ALJ asked about a conflict, or reviewed the DOT's descrip-  
 20 tion of an Upholstery Sewer, she would have found that an Upholstery  
 21 Sewer must exert 20 pounds of force occasionally and must reach  
 22 constantly. (DOT 780.682-018). Therefore, Plaintiff would not be  
 23 able to perform this job. As a result, there is a conflict between  
 24 the vocational expert's testimony and the evidence provided by the  
 25 DOT. The ALJ failed to discharge her duties pursuant to SSR 00-4p.<sup>3/</sup>

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26 <sup>3/</sup> The Court notes that Plaintiff could not perform the *other jobs* that  
 27 the vocational expert opined she could perform. A production  
 28 inspector must reach frequently (continued)  
 (continued)  
 (DOT 669.687-014 Dowel Inspector). An assembler must reach constantly  
 (DOT 715.687.010 Band Attacher). Therefore, Plaintiff would not be able

1 As a result, the Court RECOMMENDS that Plaintiff's Motion for  
 2 Summary Judgment be GRANTED and Defendant's Motion for Summary  
 3 Judgment be DENIED. Further, the Court RECOMMENDS that this case be  
 4 REMANDED to the ALJ so that she can discharge her duties pursuant to  
 5 SSR 00-4p.

6 V

7 CONCLUSION AND RECOMMENDATION

8 After a review of the record in this matter, the undersigned  
 9 Magistrate Judge RECOMMENDS that Plaintiff's Motion for Summary  
 10 Judgment be GRANTED and Defendant's Motion for Summary Judgment be  
 11 DENIED. Further, the Court RECOMMENDS that this case be REMANDED to  
 12 the ALJ so that she can discharge her duties pursuant to SSR 00-4p.

13 This report and recommendation of the undersigned Magistrate  
 14 Judge is submitted to the United States District Judge assigned to  
 15 this case, pursuant to the provision of 28 U.S.C. § 636(b)(1).

16 **IT IS ORDERED** that no later than August 20, 2010, any party  
 17 to this action may file written objections with the Court and serve  
 18 a copy on all parties. The document should be captioned "Objections  
 19 to Report and Recommendation."

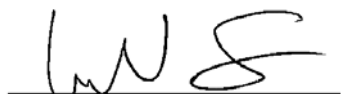
20 **IT IS FURTHER ORDERED** that any reply to the objections shall  
 21 be filed with the Court and served on all parties no later than  
 22 September 7, 2010. The parties are advised that failure to file  
 23 objections within the specified time may waive the right to raise

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 27 those objections on appeal of the Court's order. Martinez v. Ylst,

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 to perform these jobs.

1 951 F.2d 1153 (9th Cir. 1991).

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4 DATED: July 29, 2010

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7 Hon. William V. Gallo  
8 U.S. Magistrate Judge  
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